



August 11, 2000

Ms. Carolyn Jones
Town Secretary
City of Fairview
500 South Highway 5
Fairview, Texas 75069

OR2000-3060

Dear Ms. Jones:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 137952.

The Town of Fairview (the "town") received a request for various information relating to the "Voluntary Volunteer Fire Department Donation" ("fire department") and the "Voluntary Airport Donation" ("airport"). The requestor has categorized the request into a list of fifteen items. You state that the documents relating to the fire department will be made available to the requestor. You also state that the town will make available to the requestor records responsive to items 1 - 6.¹ In addition, you explain that there are no responsive documents which correspond to items 13 - 15. You claim, however, that the remaining requested information is excepted from public disclosure pursuant to sections 552.101 and 552.103 of the Government Code.² You have submitted representative samples of the information for

¹You state, however, that the town "does not waive any privileges or exceptions which may be applied once the Attorney General decides on applicable exceptions." Records that a governmental body voluntarily releases to one member of the public are generally deemed to be available to any other member of the public. See Gov't Code § 552.007.

²Although you assert that the information is excepted from public disclosure pursuant to Government Code section 552.101, you have not submitted arguments in support of that exception. Accordingly, this letter ruling only considers section 552.103.

our review.³ We have considered the exceptions you claim and reviewed the submitted information.

We begin by outlining the specific information at issue that the town seeks to withhold. The items are as follows:

8. An exemplar copy of every piece of public information, in any format, transmitted to customers of the Fairview Water System, that mentions Voluntary Airport Donation.
10. Copy of any notes, letters or other document, in any format, evidencing communication between any employee, agent or officer of the Town of Fairview and another person including employees, officers, agents or attorneys, mentioning the Voluntary Airport Donation.
12. A copy of any check, receipt, journal entry or account representing receipt of each and every Voluntary Airport Donation received since the inception of the donation requests.

You explain that over the past few years the town and the city of McKinney have had an “on-going disagreement” over the expansion of the McKinney Municipal Airport. You direct our attention to a 1998 ruling of this office which concluded that litigation relating to the expansion of the airport was reasonably anticipated. In that decision, this office excepted documents “relating to the operation of the airport” from public disclosure. *See Open Records Letter No. 98-2589 (1998)*. You state that since that time, the city of McKinney and the town have continued to disagree about the airport. To support your section 552.103 claim, you rely on the former ruling to establish that litigation is anticipated. We note, however, that that decision by this office was based on information before us at that time and does not affect the town’s burden to otherwise demonstrate the applicability of section 552.103 in this instance. Thus, we now address whether the documents responsive to items 8, 10, and 12 are excepted from public disclosure under section 552.103.

You have submitted representative samples consisting of newsletters, various town publications, a sample water bill, detailed adjustment reports, letters and communications from citizens regarding the assessment of airport donations, and various other information relating to the receipt of funds for airport donations.

³We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision Nos. 499 (1988), 497 (1988)*. This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

The test for establishing that section 552.103(a), the "litigation exception," applies to requested information is a two-prong showing that (1) the governmental body is a party to pending or reasonably anticipated litigation, and (2) the information at issue is related to that litigation. *University of Texas Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.-Austin, 1997), *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). Additionally, the governmental body must demonstrate that the litigation was pending or reasonably anticipated at the time the request for the information was received. Gov't Code § 552.103(c). The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 at 4 (1986). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

You have not demonstrated that litigation in which the town would be a party is reasonably anticipated in this instance. Nor have you provided evidence to this office that the town anticipates becoming a defendant in any related legal action. We conclude, therefore, that the town may not withhold any of the information at issue pursuant to section 552.103.

Furthermore, the newsletters and town publications are within the public domain and, therefore, public information. We further note that most of the submitted information is also public information under Government Code section 552.022 and not excepted by section 552.103 because it is clearly information in an account, voucher, or contract that relates to the receipt or expenditure of public funds. *See* Gov't Code section 552.022(a)(3).

In summary, you may not rely upon Open Records Letter No. 98-2589 (1998) as a basis for excepting from public disclosure the information responsive to the current request. The requested information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Julie Reagan Watson
Assistant Attorney General
Open Records Division

JRW/pr

Ref: ID# 137952

Encl. Submitted documents

cc: Ms. Karen H. Brophy
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(w/o enclosures)